

**MINUTES  
URBAN COUNTY PLANNING COMMISSION  
ZONING ITEMS PUBLIC HEARING**

**April 24, 2014**

- I. **CALL TO ORDER** – The meeting was called to order at 1:30 p.m. in the Council Chamber, 2<sup>nd</sup> Floor LFUCG Government Center, 200 East Main Street, Lexington, Kentucky.

Planning Commission members present: Will Berkley; Mike Cravens; Karen Mundy; Mike Owens, Chair (left at 4:47 p.m.); Frank Penn; Carolyn Plumlee; Joseph Smith; and Bill Wilson. Absent were Carla Blanton, Patrick Brewer, and David Drake.

Planning staff members present: Chris King, Director; Bill Sallee; Barbara Rackers; Jim Duncan; Traci Wade; Tom Martin; David Jarman; and Stephanie Cunningham. Other staff members present were: Tracy Jones, Department of Law; Casey Kaucher, Division of Traffic Engineering; Bettie Kerr and Amelia Armstrong, Division of Historic Preservation; and Captain Greg Lengal and Lieutenant Joshua Thiel, Division of Fire & Emergency Services.

II. **COMMISSION ITEMS**

- A. **RESOLUTION FOR FORMER PLANNING COMMISSION MEMBER** – Chairman Owens stated that, at this time, the Commission and the staff would like to formally express their sincere appreciation to Dr. Eunice Beatty for her dedication and service to the Urban County Planning Commission and the citizens of Lexington-Fayette County. He read for the record the following resolution, signed by all the Commission members:

“Whereas, we, the members of the Lexington-Fayette Urban County Planning Commission and its staff, acknowledge the resignation of Eunice Beatty from the Planning Commission; and whereas, we wish to take this opportunity to recognize Dr. Beatty for her valuable service to this Commission from June 24, 2010, to February 7, 2014, having served on the Commission’s Subdivision Committee for the entirety of her Planning Commission term; and whereas, Dr. Beatty has been influential in the formation of the 2013 Comprehensive Plan, including its adopted Goals & Objectives, and the text amendments encouraging and facilitating Infill & Redevelopment; and whereas, Dr. Beatty has consistently shown a deep concern for the citizens of Lexington-Fayette County, as reflected in her decisions regarding land use and development proposals reviewed by this Commission; and whereas, the members of this Commission and the staff feel that the service and guidance contributed by Dr. Beatty will be greatly missed by this body. Now, therefore, be it resolved: We, the members of the Commission and its staff, do hereby express our gratitude to Dr. Beatty for her service to this Commission and to the citizens of Lexington-Fayette County; and we, the Lexington-Fayette Urban County Planning Commission and staff, do hereby wish for Dr. Beatty much happiness and continued success, and ask that she continue to provide valuable guidance; and be it further resolved that a copy of this resolution be presented to Dr. Beatty and also spread upon the minute book of this body. Dated at Lexington, Kentucky, this 24<sup>th</sup> day of April, 2014.”

Ms. Beatty stated that she would like to thank the Commission members and the staff for allowing her the opportunity to serve the community. She said that, thinking back to when she first joined the Commission, her learning curve was steep; but she learned more each month, particularly during the Comprehensive Plan update. Ms. Beatty said that she could not think of another board that she had served on that was as important as the Planning Commission, since she had the opportunity to help shape the city’s development. She thanked the Commission members and staff again, and wished them all the best.

- B. **REQUEST FOR CLOSED SESSION** – At this time, the staff of the Law Department requested that the Commission enter into a closed session to discuss a matter of pending litigation. A motion was made by Ms. Mundy, seconded by Mr. Penn, and carried 8-0 (Blanton, Brewer, and Drake absent) to enter into closed session at 1:40 p.m. to discuss a matter of pending litigation. The meeting reconvened in open session at 2:05 p.m.
- III. **APPROVAL OF MINUTES** – A motion was made by Mr. Cravens, seconded by Ms. Mundy, and carried 8-0 (Blanton, Brewer, and Drake absent) to approve the minutes of the March 27, 2014, Planning Commission meeting..
- IV. **POSTPONEMENTS AND WITHDRAWALS** – No such items were presented.
- V. **LAND SUBDIVISION ITEMS** - The Subdivision Committee met on Thursday, April 3, 2014, at 8:30 a.m. The meeting was attended by Commission members: Carolyn Plumlee, Joe Smith, Will Berkley, Karen Mundy and Mike Owens. Committee members in attendance were: Hillard Newman, Division of Engineering; and Jeff Neal, Division of Traffic Engineering. Staff members in attendance were: Bill Sallee, Tom Martin, Cheryl Gallt, Dave Jarman, Denice Bullock and Scott Thompson, as well as Captain Greg Lengal and Lieutenant Joshua Thiel, Division of Fire & Emergency Services; and Ed Gardner, Department of Law. The Committee made recommendations on plans as noted.

General Notes

*The following automatically apply to all plans listed on this agenda unless a waiver of any specific section is granted by the Planning Commission.*

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\* - Denotes date by which Commission must either approve or disapprove request.

1. All preliminary and final subdivision plans are required to conform to the provisions of Article 5 of the Land Subdivision Regulations.
2. All development plans are required to conform to the provisions of Article 21 of the Zoning Ordinance.

VI. **ZONING ITEMS** - The Zoning Committee met on Thursday, April 3, 2014, at 1:30 p.m. in the Division of Planning Office. The meeting was attended by Commission members Mike Cravens, David Drake, and Bill Wilson. The Committee reviewed applications, and made recommendations on zoning items as noted.

A. **ABBREVIATED PUBLIC HEARINGS ON ZONING MAP AMENDMENTS**

The staff will call for objectors to determine which petitions are eligible for abbreviated hearings.

Abbreviated public hearings will be held on petitions meeting the following criteria:

- The staff has recommended approval of the zone change petition and related plan(s)
  - The petitioner concurs with the staff recommendations
  - Petitioner waives oral presentation, but may submit written evidence for the record
- There are no objections to the petition

1. **COLLINS-WATHEN PROPERTIES, LLC, ZONING MAP AMENDMENT & MARY SWIFT, ET AL. PROPERTY, LOT 3, ZONING DEVELOPMENT PLAN**

- a. **MARV 2014-7: COLLINS-WATHEN PROPERTIES, LLC (6/1/14)\*** – petition for a zone map amendment from a High Density Apartment (R-4) zone to a Neighborhood Business (B-1) zone, for 0.441 net (0.515 gross) acre, for property located at 508 West Second Street. Dimensional variances are also requested with this application.

**COMPREHENSIVE PLAN AND PROPOSED USE**

The 2013 Comprehensive Plan's Goals and Objectives recommend identifying opportunities for infill, redevelopment and adaptive reuse that are respectful of an area's context and design features (Theme A, Goal 2a); providing for well-designed neighborhoods and communities (Theme A, Goal 3); providing entertainment and other quality of life opportunities that will attract young professionals and a workforce of all ages and talents to Lexington (Theme C, Goal 2d); encouraging the renovation, restoration, development and maintenance of historic structures (Theme D, Goal 2b); and encouraging mixed-use sustainable development with the Urban Service Area (Theme E, Goal 1b). The subject property is located within the *Downtown Master Plan* boundary, a 2005 planning effort of the Lexington Downtown Development Authority (DDA).

The petitioner proposes to rezone the property to the B-1 zone in order to renovate the existing structure for a mix of uses, including a restaurant, retail sales, office, and residential. The petitioner is also requesting a variance for landscaping along the shared property line with the Ballard-Griffith Towers.

The Zoning Committee Recommended: **Approval**, for the reason provided by staff.

The Staff Recommends: **Approval**, for the following reason:

1. The requested Neighborhood Business (B-1) zone for the subject property is in agreement with the 2013 Comprehensive Plan for the following reasons:
  - a. The Goals and Objectives recommend: 1) identifying areas of opportunity for infill, redevelopment and adaptive reuse that respect the area's context and design features (Theme A, Goal 2a); and 2) providing a well-designed neighborhood and community (Theme A, Goal 3). This adaptive reuse development will maintain the historic structure, which is already in keeping with the neighborhood and is a contributing structure to the Northside National Register Historic District.
  - b. The Goals and Objectives encourage providing entertainment and other quality of life opportunities that attract young professionals and a workforce of all ages and talents to Lexington (Theme C, Goal 2d). The applicant is proposing to further the resurgence of the Jefferson Street corridor by including a mixture of uses in their proposed reuse of the site.
  - c. The Goals and Objectives support the renovation, restoration, development and maintenance of historic structures (Theme D, Goal 2b). The petitioner will renovate and restore the existing historic residential structure and its addition for the proposed mixture of uses.
  - d. The Goals and Objectives encourage compact, contiguous and/or mixed use sustainable development within the Urban Service Area, as guided by market demand, to accommodate future growth needs (Theme E, Goal 1b). The mixed use, adaptive reuse of the property will, in its own small way, help alleviate pressure to expand the Urban Service Area in the future.
  - e. The Goals and Objectives of the 2013 Comprehensive Plan are supported by the applicant's requested rezoning, and the requested B-1 zone is compatible with the adjacent zoning to both the south (Jefferson Street) and the northeast (West Jefferson Place).
2. This recommendation is made subject to approval and certification of **ZDP 2014-28: Mary Swift, et al. Property (Lot 3)**, prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.

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b. **REQUESTED VARIANCES**

1. Reduce the zone-to-zone screening requirements along the northwest and southwest property lines: a) the required width from 15' to 5', and b) the hedge requirement from a double row 6-foot high hedge to a single row 3-foot high hedge.

The Zoning Committee Recommended: **Approval**, for the reasons provided by staff.

The Staff Recommends: **Approval of the requested landscape variances**, for the following reasons:

- a. Granting the requested landscape variances will not adversely affect the public health, safety or welfare; will not alter the character of the general vicinity, and will not cause a hazard or nuisance to the public. The variances are requested because no physical change or expansion of the existing building or parking lot is proposed by the applicant, and because it would be impossible to provide a 15-foot buffer with a double-row hedge without losing a substantial amount of parking, which will be needed for the uses proposed with the redevelopment of the property.
- b. Granting the requested landscape variances will not result in an unreasonable circumvention of the Zoning Ordinance because the previous use of the property (Planned Parenthood) required only vehicular use area screening, which currently exists. Planned Parenthood was a non-residential use of a residentially-zoned property and maintained only the required (although minimal) vehicular use area screening. It is because the zoning of the property is changing that the zone-to-zone screening would be required. The proposed use will likely not be much, if any, more intense than the previous use of the property, and the existing screening will be enhanced to meet current requirements.
- c. The special circumstance that applies to this property that does not generally apply to land in the general vicinity is that the two sides of the property that require the zone-to-zone screening are bounded by parking lots and a local street that provides access to the subject property, as well as other properties. There are existing trees along those two property lines that will be supplemented with a 3-foot hedge, which is consistent with vehicular use area screening, and which meets the intent of the landscape requirements.
- d. Strict application of the requirements of the Zoning Ordinance would deprive the applicant of a reasonable use of the property and would create an unnecessary hardship because there is already screening between this property and the adjacent properties. The applicant is not planning any substantial change to the existing parking area; and there are no physical changes (other than interior) associated with the property, which has been occupied as a non-residential use for decades, although under residential zoning.
- e. Although the circumstances surrounding the requested variances are due to the proposed zone change, the property was used as a community center/health facility for approximately 40 years. The proposed uses of the property will likely be no more intense than the previous use. The vehicular use area, which is existing, will remain unchanged except for supplementing the landscaping to meet current requirements of the Zoning Ordinance for vehicular use areas. The rezoning has been requested to allow the property to mesh with the revitalization of the Jefferson Street Corridor and to provide a transitional use between the existing commercial uses of the corridor and the residential uses that adjoin the subject property.

This recommendation of approval is made subject to the following conditions:

1. Provided the Urban County Council rezones the property **B-1**; otherwise, any Commission action of approval of this variance is null and void.
  2. Should the property be rezoned, it shall be developed in accordance with the approved Development Plan, as amended by a future Development Plan approved by the Commission, or as a Minor Amendment permitted under Article 21-7 of the Zoning Ordinance.
  3. A note shall be placed on the Zoning Development Plan indicating the variances that the Planning Commission has approved for this property [under Article 6-4(c) of the Zoning Ordinance].
  4. Prior to obtaining an Occupancy Permit, the applicant shall obtain a Zoning Compliance Permit from the Division of Planning.
  5. The vehicular use area shall be landscaped with a continuous 3-foot hedge, as generally required by the Zoning Ordinance for vehicular use areas. This shall be completed prior to issuance of a Certificate of Occupancy for any of the proposed uses.
  6. A note shall be added to the development plan indicating that the need for additional landscaping will be considered along the property lines in the event a future redevelopment is proposed for the subject property.
- c. **ZDP 2014-28: MARY SWIFT, ET AL. PROPERTY, LOT 3 (6/1/14)\*** - located at 508 West Second Street.  
(Barrett Partners)

The Subdivision Committee Recommended: **Approval**, subject to the following conditions:

1. Provided the Urban County Council rezones the property **B-1**; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage and storm and sanitary sewers.

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3. Urban County Traffic Engineer's approval of street cross-sections and access.
4. Building Inspection's approval of landscaping and landscape buffers.
5. Addressing Office's approval of street names and addresses.
6. Urban Forester's approval of tree preservation plan.
7. Bike & Pedestrian Planner's approval of bike trails and pedestrian facilities.
8. Division of Fire, Water Control Office's approval of the locations of fire hydrants, fire department connections and fire service features.
9. Division of Waste Management's approval of refuse collection locations.
10. Documentation of Division of Water Quality's approval of the Capacity Assurance Program requirements, prior to plan certification.
11. Resolve off-site parking.
12. Resolve required open space and use and maintenance of detention basin to meet those requirements.

Zoning Presentation: Ms. Wade presented the staff report, briefly orienting the Commission to the location of the subject property. Using the rendered zoning map, she noted that the frontage of the subject property is located approximately 60 feet from the intersection of Jefferson and West Second Streets. The area is predominantly characterized by B-1 zoning along Jefferson Street, and across West Second Street, for the location of the West Jefferson Place office development. Other zoning in the area is primarily multi-family residential, with R-4 to the southeast, north, and west; and R-5 in the Griffith-Ballard Towers adjacent to the subject property. Also in the general vicinity are single family residential zoning along Maryland Avenue; Harrison Elementary School, on Bruce Street; and some new restaurant and entertainment venues along Jefferson Street.

Ms. Wade stated that the petitioner is proposing to rezone the subject property to B-1 in order to re-use the existing building for offices on the third floor; residential uses on the second and third floors; and retail and restaurant uses on the first floor. She said that there is an existing parking lot on the subject property. Displaying a photograph of the subject property and surrounding area, she explained that the Griffith-Ballard Towers are the predominant structures in the vicinity, which have frontage on Jefferson Street and Tower Plaza. The existing structure on the property was once used as a single-family residence; however, in the 1970s, Planned Parenthood purchased the property in order to occupy the building as a community center. A large addition was later constructed to the rear of the original structure. Planned Parenthood recently sold the property and relocated to another portion of the community, and the property was then purchased by the petitioner.

Ms. Wade said that the petitioner contends that the proposed B-1 zone is in agreement with the recommendations of the 2013 Comprehensive Plan, specifically citing several Goals & Objectives that could be furthered if the property is rezoned and adaptively re-used. The staff found that at least five Goals & Objectives were applicable to this request, which were related to: identifying opportunities for infill and redevelopment and adaptive reuse; providing for well-designed neighborhoods and communities; providing entertainment and other quality of life opportunities within the community; encouraging the renovation, restoration, and rehabilitation of historic structures; and encouraging mixed-use and sustainable development within the Urban Service boundary. In addition, the staff believes that the proposed mixed-use development would be appropriate at this location as a land use transition between the B-1 uses along Jefferson Street and the multi-family Tower Plaza development on the other side of the subject property. Ms. Wade stated that the staff and the Zoning Committee recommended approval of this request, for the reasons as listed in the staff report and on the agenda.

Development Plan Presentation: Mr. Martin presented the corollary final development plan, further orienting the Commission to the location of the subject property. Using a rendered development plan, he explained that the petitioner is proposing to maintain the existing three-story structure on the property, which includes a three-story addition and a two-story connecting structure. The structure, which was formerly used as a residence, is just over 8,000 square feet in size. The petitioner is proposing a restaurant use for just over 2,200 square feet of the building, with apartments, to be located on the second and third floors, for just over 4,000 square feet. Mr. Martin stated that the only physical change proposed to the property is the addition of a walk-in cooler for the restaurant.

Mr. Martin said that the development plan depicts a location for solid waste roll carts, since the subject property is too small to accommodate a traditional dumpster. He explained that it is not uncommon for businesses in the Jefferson Street area to use Herbie roll cart service, for that reason. The plan also depicts 23 existing parking spaces, which meets the Zoning Ordinance requirements, following the petitioner's usage of the allowable transit stop parking reduction. Referring to the green crosshatched areas on the rendered development plan, Mr. Martin stated that the petitioner is depicting the required open space on the property, including some balconies, which is part of the residential component. The plan also depicts a detention basin, which is shared with the adjoining property. There were some initial concerns about utilizing that detention basin as part of the required open space. The staff is not averse to the use of a detention basin as open space, but they believe that it should be reviewed on a case-by-case basis. Mr. Martin said that, after a great deal of review and discussion, the staff is comfortable with that use of the basin on the subject property. The basin is small and shallow, but the property is fully developed, and only a small amount of square footage is proposed to be added; so the staff is not concerned about the creation of additional runoff. The detention basin will be maintained by the owners of both properties, as required by the Stormwater Manuals.

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Commission Questions: Mr. Owens asked if conditions #11 and #12 had been resolved. Mr. Martin answered that those conditions had been resolved, and they could be deleted.

Mr. Penn stated that the Grey Goose restaurant had been leasing parking spaces on the subject property, and asked if that agreement was still in place. Mr. Martin responded that it was the staff's understanding that there are no longer any leases in place for off-site parking on the subject property.

Variance Presentation: Mr. Sallee presented the staff's report on the requested variance, explaining that the petitioner was requesting to: 1) reduce the width of the required landscaping between the business zone and residential zone from 15' to 5'; and 2) eliminate the requirement for a 6' hedge, replacing it with a 3' hedge. He said that the zone-to-zone screening is required on the northwest and southwest property lines, where the business zone abuts residential zoning. Referring to an aerial photograph of the subject property, he noted that there are existing parking lots on both sides of those property boundaries, which provide additional separation from the more typical adjacent residential uses. At the Zoning Committee meeting, the staff denoted that as a unique circumstance to the subject property that warrants some justification for the requested variance.

Mr. Sallee stated that the Landscape Review Committee reviewed this request at their meeting on March 18<sup>th</sup>, although there was no quorum present. The members in attendance at that meeting did express general agreement that the landscaping along the northwestern and southwestern property lines was more similar to that for a parking lot, than for a traditional business zone to residential zone configuration. That was also, in essence, the basis of the petitioner's justification for the requested variance. Mr. Sallee said that the staff has reviewed that justification, and agrees with the petitioner's assessment. There is existing landscaping material in place already, and the members of the Landscape Review Committee who reviewed this application recommended that it be maintained. Mr. Sallee added that the staff had received at least one phone call from a resident of the area who was comforted that the existing landscape material would be maintained. He said that the staff is recommending approval of the requested variance, for the reasons as listed in the staff report and on the agenda, and subject to the six conditions as listed.

Petitioner Representation: Richard Murphy, attorney, was present representing the petitioner. He said that the petitioner purchased the property approximately six months ago from the Planned Parenthood organization.

Mr. Murphy stated that the petitioner is proposing to create a mixed-use development on the subject property, with a restaurant on the first floor; residential use on the second and third floors; and a small office for the restaurant on the third floor. The petitioner's father owns the successful Nick Ryan's restaurant, which is located near the subject property, and he intends to operate the small restaurant proposed for the subject property as well.

Mr. Murphy said that the petitioner is in agreement with the staff's recommendations, including the conditions for approval of the variance. He explained that the variance was not being requested in order to change the site, but rather to maintain it the way it currently exists. He said that, if the petitioner was forced to meet the landscape requirement along the northwest property line, the landscaping would eliminate a large amount of the existing parking.

Citizen Comment: There were no citizens present to comment on this request.

Zoning Action: A motion was made by Mr. Wilson, seconded by Ms. Mundy, and carried 8-0 (Blanton, Brewer, and Drake absent) to approve MARV 2014-7, for the reasons provided by staff.

Variance Action: A motion was made by Mr. Wilson, seconded by Ms. Plumlee, and carried 8-0 (Blanton, Brewer, and Drake absent) to approve the requested variance, for the reasons provided by staff, subject to the six conditions as listed in the staff report and on the agenda.

Development Plan Action: A motion was made by Mr. Wilson, seconded by Ms. Mundy, and carried 8-0 (Blanton, Brewer, and Drake absent) to approve ZDP 2014-28, with the first 10 conditions as listed, deleting #11 and #12.

**B. FULL PUBLIC HEARINGS ON ZONE MAP AMENDMENTS** – Following abbreviated hearings, the remaining petitions will be considered.

The procedure for these hearings is as follows:

- Staff Reports (30 minute maximum)
- Petitioner's report(s) (30 minute maximum)
- Citizen Comments
  - (a) proponents (10 minute maximum OR 3 minutes each)
  - (b) objectors (30 minute maximum) (3 minutes each)
- Rebuttal & Closing Statements
  - (a) petitioner's comments (5 minute maximum)

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- (b) citizen objectors (5 minute maximum)
- (c) staff comments (5 minute maximum)
- Hearing closed and Commission votes on zone change petition and related plan(s)

**Note:** Requests for additional time, stating the basis for the request, must be submitted to the staff no later than two days prior to the hearing. The Chair will announce its decision at the outset of the hearing.

1. **BURLEY PARTNERS, LLC, ZONING MAP AMENDMENT & LYNN GROVE ADDITION, LOTS 8-17 (BURLEY CONDOMINIUMS) ZONING DEVELOPMENT PLAN**

- a. **MARV 2014-8: BURLEY PARTNERS, LLC** (6/1/14)\* – petition for a zone map amendment from a Single Family Residential (R-1D) zone to a High Density Apartment (R-4) zone, for 0.9 net (1.1 gross) acres, for property located at 201 & 205 Burley Avenue; 1107, 1109 & 1111 Stillwell Avenue. Dimensional variances are also requested with this application.

**COMPREHENSIVE PLAN AND PROPOSED USE**

Related to the proposed rezoning, the 2013 Comprehensive Plan Goals and Objectives recommend expanding housing choices (Theme A, Goal 1); supporting infill and redevelopment as a strategic component of growth, including compact and contiguous growth (Theme A, Goal 2 and Theme E, Goal 1b); providing for well-designed neighborhoods and communities (Theme A, Goal 3); and improving a desirable community by working to achieve an effective and comprehensive transportation system (Theme D, Goal 1). *Chapter 7: Maintaining a Balance between Planning for Urban Uses and Safeguarding Rural Land* of the 2013 Plan also addresses specific recommendations for Infill and Redevelopment within Lexington-Fayette County.

The applicant proposes redeveloping the subject property with a combination of single family townhouse and multi-family dwelling units, and associated off-street parking. The plan depicts 14 dwelling units, which represents a density of 15.55 dwelling units per net acre. Dimensional variances are requested in conjunction with the requested zone change for the subject property.

The Zoning Committee Recommended: **Approval**, for the reasons provided by staff.

The Staff Recommends: **Approval**, for the following reasons:

1. The requested High Density Apartment (R-4) zoning for the subject property is in agreement with the 2013 Comprehensive Plan's Goals and Objectives for the following reasons:
    - a. The Goals and Objectives recommend expanding housing choices within the community. This development will provide two types of housing on the subject property, with single-family residences remaining in the immediate vicinity (Theme A, Goal 1).
    - b. The Goals and Objectives support infill and redevelopment of a compact and contiguous nature as a strategy for community growth (Theme A, Goal 2 and Theme E, Goal 1b). The applicant is proposing to add 14 dwelling units, at a density of 15.55 dwelling units per acre, where only one residence now exists. The proposed density is more compatible with the current redevelopment trend in this neighborhood.
    - c. The Goals and Objectives support improving a desirable community by working to achieve an effective and comprehensive transportation system (Theme D, Goal 1). The proposed development can provide pedestrian connections and street improvements in a neighborhood with a higher than average number of pedestrians and students.
    - d. *Chapter 7* of the 2013 Plan also addresses specific recommendations for Infill and Redevelopment within Lexington-Fayette County, including consideration of multi-modal transportation and open space (pg. 101), and respecting the context and character of a neighborhood (pg. 102). In designing the redevelopment, the applicant has attempted to respect the scale and character of the neighborhood by proposing primary entrances along the street, and buildings with a maximum of two stories and sloped roofs to address the goal of well-designed neighborhoods and communities (Theme A, Goal 3).
    - e. The Goals and Objectives of the 2013 Comprehensive Plan are supported by the applicant's requested rezoning, and the requested R-4 zone is compatible with the adjacent zoning to both the northwest (Riddell Plaza) and the east (Lynn Grove Addition).
  2. This recommendation is made subject to approval and certification of **ZDP 2014-29: Lynn Grove Addition, Lots 8-17 (Burley Condominiums)**, prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.
- b. **REQUESTED VARIANCES**
1. Reduce the front yard setback from Burley Avenue from 20' to 5'.
  2. Reduce the front yard setback from Stillwell Avenue from 20' to 5'.
  3. Project exterior yard from 20' to 5'.
  4. Reduce the property perimeter landscape buffer for an adjacent residential zone from 6' to 2.5'.
  5. Reduce zone-to-zone perimeter landscape buffer for an adjacent business zone from 15' to 4'.

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The Zoning Committee Recommended: **Postponement**, for the reason provided by staff.

The Staff Recommends: **Postponement of the requested variances**, for the following reason:

1. No justification has been submitted for the requested variances as of the date of this report. This should be provided by the applicant, and reviewed by the staff, prior to a substantive recommendation on the requested variances.

- c. ZDP 2014-29: LYNN GROVE ADDITION, LOTS 8-17 (BURLEY CONDOMINIUMS) (6/1/14)\* - located at 1107, 1109 and 1111 Stillwell Avenue and 201 and 205 Burley Avenue. **(Abbie Jones Consulting)**

The Subdivision Committee Recommended: **Postponement**. There are questions regarding the compliance with the open space, off-street parking and floor area ratio requirements.

Should this plan be approved, the following requirements should be considered:

1. Provided the Urban County Council rezones the property R-4; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers, and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access, and street cross-sections.
4. Building Inspection's approval of landscaping and landscape buffers.
5. Urban Forester's approval of tree inventory map.
6. Denote: No building permits shall be issued unless and until a final development plan is approved by the Planning Commission.
7. Delete all subdivision plan lotting information and correct plan title.
8. Delete property description information.
9. Delete specific utility information and add proposed and existing easements.
10. Delete TPP.
11. Delete notes #4, #9 and #11.
12. Correct floodplain note to correct effective date.
13. Addition of street cross-sections.
14. Delete 12' pavement replacement reference.
15. Delete sight triangle reference.
16. Dimension sidewalks, landings and balconies.
17. Correct proposed zone in site statistics.
18. Clarify lot coverage and floor area ratio in site statistics.
19. Addition of building dimension.
20. Denote common space maintenance per Art 9-6(j) of the Zoning Ordinance.
21. Denote that compliance with Art. 15-7(a) and (b) shall be determined at final development plan.
22. Clarify or remove variance cross-sections.
23. Denote number of dwelling units and bedrooms in site statistics.
24. Discuss parking requirement generator (bedrooms vs. dwelling units).
25. Discuss street frontage improvements proposed.
26. Discuss right-of-way and building line along Stillwell Avenue.
27. Discuss compliance with minimum open space requirement.

Zoning Presentation: Ms. Wade began the staff's zoning presentation by entering into the record one letter of support received by the staff from Ginny Daley, a resident of the Burley Avenue neighborhood. She briefly oriented the Commission to the location of the subject property at the northern corner of the intersection of Burley and Stillwell Avenues, with Virginia Avenue to the northeast; South Broadway to the northwest; and Waller Avenue and South Limestone Street to the south and southeast, respectively. Zoning in the vicinity of the subject property includes single family residential on the other side of Burley Avenue; R-4 zoning adjacent to the subject property to the northwest and east; a small pocket of single family residential along Stillwell Avenue; and a B-4 area along Simpson Avenue that is currently occupied by a warehouse. Ms. Wade stated that the subject property has frontage along Burley and Stillwell Avenues.

Ms. Wade noted that the Planning Commission has considered several zone changes in the vicinity of the subject property recently, as well as a development plan for the Burley Condominium development on the adjacent property. Those redevelopment projects have made the neighborhood denser and have changed its character significantly, which the staff had to take into consideration as part of their review of this request.

Ms. Wade stated that the petitioner is proposing to construct 14 dwelling units on the subject property, for a residential density of just over 15.5 dwelling units per acre. The petitioner contends that the requested rezoning is in agreement with the 2013 Comprehensive Plan. Past Comprehensive Plans recommended Medium Density Residential land use, the density of which is slightly below what is being proposed for the subject property. Ms. Wade said that, in reviewing this request with regard to the 2013 Comprehensive Plan, the staff found that several of the Goals & Objectives would

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be furthered by the proposed rezoning. The Comprehensive Plan recommends expanded housing choices; supporting Infill & Redevelopment as a strategic component of growth; specifically including compact and contiguous growth; providing for well-designed neighborhoods and communities; and improving desirable communities by working to achieve effective and comprehensive transportation systems. The staff specifically reviewed Chapter 7 of the Comprehensive Plan, which discusses Infill & Redevelopment strategies and makes specific recommendations.

Ms. Wade stated that, since the proposed development would provide two different kinds of housing types to go along with the existing single-family and multi-family residences in the immediate vicinity, the staff believes that it furthers the goal of encouraging various housing types and having expanded housing options. In addition, the corollary development plan depicts dwelling units that are oriented toward the street with parking to the rear, which is another recommendation of Chapter 7 of the Comprehensive Plan. Although this proposal is not quite as dense as some of the other recent developments in the area, it does propose to add density in a compact and contiguous form, which is specifically recommended by the Goals & Objectives. The staff believes that the petitioner has attempted to respect the character of the neighborhood in terms of the scale of the proposed development by proposing units that are only two stories tall, with entrances that are on the street and sloped roofs, all of which are also specifically recommended by Chapter 7 of the Plan. Chapter 7 also includes consideration of multi-modal transportation and open space, as well as respecting the context and character of a neighborhood.

Ms. Wade stated that the staff noted in their report how important they believed the street improvements along Burley and Stillwell Avenues would be, particularly with regard to pedestrian accommodations, since there are no existing sidewalks along the frontages of the subject property. Those road improvements would contribute to the proposed development addressing Theme D, Goal 1 of the Comprehensive Plan, which refers to the need for a comprehensive transportation system in the area. That transportation system is particularly important in the vicinity of the subject property, given the nature of the student population in the area. The staff believes that the proposed R-4 zone would be compatible with the existing R-4 on either side of the subject property. The staff took into consideration recent zone changes in the neighborhood and the gradual densification of the area, and believes that Burley Avenue is the most logical physical boundary for land use separation between the single-family uses to the southwest toward American Avenue, and multi-family uses between Burley and Virginia Avenues. That boundary will help to preserve the lower-density character of the rest of the neighborhood.

Ms. Wade stated that the staff and the Zoning Committee recommended approval of this request, for the reasons as listed in the staff report and on the agenda.

Development Plan Presentation: Mr. Martin presented the corollary zoning development plan, further orienting the Commission to the location of the subject property. He stated that the petitioner is proposing to construct one bank of units with frontage on Stillwell Avenue, and another with frontage on Burley Avenue, for a total of 14 units. The units are proposed to be a mixture of two-story townhouses and two-story, two-unit duplexes. Parking is proposed to the rear of the structures, with access to Stillwell Avenue. The 44 bedrooms proposed in this development require 40 parking spaces; the petitioner is proposing to provide 46 spaces. Referring to a rendered development plan, Mr. Martin indicated the proposed open space areas. He said that the proposed development does meet the open space requirement, based mostly on balconies, sidewalks, landings, and a small green area at the rear of the property.

Mr. Martin stated that the development is proposed to be located very close to the street, with a 5' building line, for an urban presentation to the street. The total square footage proposed for the development is 11,600 square feet for the buildings, with 29.5% lot coverage; the requested R-4 zone allows up to 30% lot coverage. The proposed floor area ratio is .58, which falls under the maximum of .7. Mr. Martin noted that, with the lot coverage and height restrictions, it was unlikely that any further development could occur on the property.

Mr. Martin said that this plan has undergone several revisions. Referring to the revised conditions that were distributed to the Commission members prior to the start of the hearing, he noted that there were initially a large number of conditions, but many of those have been met through the revision process:

1. Provided the Urban County Council rezones the property R-4; otherwise, any Commission action of approval is null and void.
2. Urban County Engineer's acceptance of drainage, storm and sanitary sewers, and floodplain information.
3. Urban County Traffic Engineer's approval of parking, circulation, access, and street cross-sections.
4. Building Inspection's approval of landscaping and landscape buffers.
5. Urban Forester's approval of tree inventory map.
6. ~~Denote: No building permits shall be issued unless and until a final development plan is approved by the Planning Commission. Remove recording stamp box from plan.~~
7. ~~Delete all subdivision plan lotting information and correct plan title~~ Revise note #13 to the approval of the Environmental Planner.
8. ~~Delete property description information~~ Correct Stillwell Avenue cross-section to the approval of the Division of Traffic Engineering.
9. Delete specific utility information and add a listing of proposed and existing easements.

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10. ~~Delete TPP Provided the Planning Commission grants the requested variances.~~
11. ~~Delete notes #4, #9 and #11.~~
12. ~~Correct floodplain note to correct effective date.~~
13. ~~Addition of street cross-sections.~~
14. ~~Delete 12" pavement replacement reference.~~
15. ~~Delete sight triangle reference.~~
16. ~~Dimension sidewalks, landings and balconies.~~
17. ~~Correct proposed zone in site statistics.~~
18. ~~Clarify lot coverage and floor area ratio in site statistics.~~
19. ~~Addition of building dimension.~~
20. ~~Denote common space maintenance per Art 9-6(j) of the Zoning Ordinance.~~
21. ~~Denote that compliance with Art. 15-7(a) and (b) shall be determined at final development plan.~~
22. ~~Clarify or remove variance cross-sections.~~
23. ~~Denote number of dwelling units and bedrooms in site statistics.~~
24. ~~Discuss parking requirement generator (bedrooms vs. dwelling units).~~
25. ~~Discuss street frontage improvements proposed.~~
26. ~~Discuss right of way and building line along Stillwell Avenue.~~
27. ~~Discuss compliance with minimum open space requirement.~~

With regard to the conditions for approval, Mr. Martin stated that #6 refers to the recording stamp box from the plan. He said that development plans themselves are not recorded; rather, a Land Use Certificate is recorded, per state requirements. Condition #7 refers to some geo-technical work that has been done on the property, which resulted in a report that was investigated by the Environmental Planner about a possible sinkhole on the subject property. The staff wanted to ensure that, when the petitioner is ready to develop the property, the Environmental Planner is notified and can investigate the property appropriately. Mr. Martin said that the petitioner has agreed to construct improvements to Stillwell Avenue, so condition #8 was necessary to denote the correct cross-section to reflect the improvements.

Commission Question: Mr. Owens asked if condition #10 would still be needed if the requested variances are approved. Mr. Martin answered that, should the Commission choose to recommend approval of the variances, that condition could be deleted.

Variance Presentation: Mr. Sallee presented the Supplemental Staff Report on this portion of the request. He stated that the petitioner is requesting five dimensional and landscaping variances in conjunction with this rezoning request: 1) to reduce the front setback along Burley Avenue to 5' from 20', which is normally required for a Group Residential Project; 2) to reduce the front setback along Stillwell Avenue to 5' from 20'; 3) to reduce the Project Exterior Yard from 20' to 5'; 4) to reduce the property perimeter landscape buffer adjacent to a residential zone from 6' to 2.5' along the rear property line, noting that the petitioner proposes to plant 3' tall shrubs in that location, where an existing chain-link fence and some trees are proposed to remain; and 5) to reduce the landscape buffer for an adjacent business zone from 15' to 4'.

Mr. Sallee stated that, at the Zoning Committee meeting three weeks ago, the staff originally recommended postponement of the requested variances, because they did not believe that a proper justification had been submitted for this request at that time. Since that meeting, the staff has received a more complete justification from the petitioner. The primary justification is twofold. First, the petitioner is requesting that the proposed development be reviewed more in keeping with a standard townhouse development, rather than a mixture of townhouses and "up and down" duplexes, as depicted on the development plan. That would result in setbacks that are not typical of a standard apartment development, as "Group Residential Projects" usually are classified. Second, the petitioner has a desire to maximize the amount of off-street parking that is available for the proposed development, in part due to concerns from some of the neighborhood residents.

Mr. Sallee said that those two factors, in the staff's opinion, provide the necessary justification for the approval of most of the proposed variances. This request was reviewed by the Landscape Review Committee, which, although there was no quorum present, two members made a recommendation to modify the requested variance adjacent to existing single-family residential uses. The Committee members believed that the requested 2.5' setback was too narrow of a buffer at that location, so they recommended the provision of a more substantial buffer. The staff is recommending that a variance be granted from 6' to 5', rather than to the 2.5' requested, and that the hedge material be provided as noted on the development plan. Mr. Sallee stated that the staff is recommending approval, with this one modification:

**The Staff Recommends: Approval of the requested variances (#1-5), but only a perimeter landscape buffer (#4) variance from 6' to 5' along the northeastern property line, including elimination of a 6' tall fence (adjacent to single family homes), for the following reasons:**

- a. Granting the requested variances, as modified along one property line, will not adversely affect the public health, safety or welfare; will not alter the character of the general vicinity, and will not cause a hazard or nuisance to the

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public. The setback variances will be more in keeping with the character of new townhouse developments in this immediate neighborhood. There will be more typical building setbacks along the other two property lines; and due to tree planting requirements in the Zoning Ordinance, the remaining yards between the street sidewalks and the new dwelling units will need to be planted with some trees.

- b. Granting these variances will not result in an unreasonable circumvention of the Zoning Ordinance because the overall redevelopment of this (former church) property will still be screened from adjacent properties, and would only be required 10' yards if it were all townhomes. The proposed design is to encourage a staggered, walk-up townhome style that is in keeping with the single-family residential character that some of the neighbors desire in this area.
- c. The special circumstance that applies to this property that does not generally apply to land in the general vicinity is that there is an existing, heavily vegetated buffer between the warehouse business and the subject property, as well as a strong desire by the applicant, and the neighbors they have consulted with, to provide as much off-street parking as possible at this location. Placing parking areas behind the front building line is encouraged by recent Infill & Redevelopment studies.
- d. Strict application of the requirements of the Zoning Ordinance would create an unnecessary hardship for the applicant because of the limited space available on the site for two, full-width, vehicular drive aisles with a row of townhouse units – given their efforts to quell neighborhood concerns about the added need for off-street parking in this area.
- e. The circumstances surrounding the requested variances are not the result of prior actions taken by this applicant, as no construction (or even building demolition) has yet occurred on the subject site.

This recommendation of approval is made subject to the following conditions:

1. Provided the Urban County Council rezones the property R-4; otherwise, any Commission action of approval of this variance is null and void.
2. Should the property be rezoned, it shall be developed in accordance with the approved Development Plan, as amended by a future Development Plan approved by the Commission, or as a Minor Amendment permitted under Article 21-7 of the Zoning Ordinance.
3. A note shall be placed on the Zoning Development Plan indicating the variances that the Planning Commission has approved for this property (under Article 6-4(c) of the Zoning Ordinance).
4. A minimum landscaped buffer width of 5' shall be maintained along the northeastern property line, with hedge material at least 3' in height and trees spaced no more than 40' apart.

Petitioner Representation: Abbie Jones, Abbie Jones Consulting, was present representing the petitioner, who was not able to be present today. She stated that the petitioner has been working with the church that was formerly located on the property, and which is now no longer able to maintain it. The church supports the proposed development, as do many residents of the surrounding neighborhood, including some neighbors who opposed other developments in the area.

Ms. Jones stated that the petitioner believes that the proposed development is a unique mixture of townhome and apartment-style units for the subject property. That mixture includes an “up and down” apartment configuration that is atypical of this area, which necessitated the need for the requested variances. With regard to the staff’s previous concerns about the open space requirements, Ms. Jones said that the petitioner took advantage of an allowable reduction due to the proximity of Burley Park, which is located just across the street from the subject property.

Ms. Jones said that the petitioner is in agreement with the staff’s recommendations, including the modification to the requested variances, and she requested approval.

Citizen Comment: Ginny Daley, 136 Burley Avenue, stated that her residence is located five houses away from the subject property. She said that she believed that it was important for her to address the Commission in support of this request, since she has appeared before them several times in opposition to other recent developments in the area.

Ms. Daley said that, while the proposed development is not what she and her neighbors would have preferred for their neighborhood, the petitioner has reached out to them and is willing to hear their concerns. She added that the petitioner has been open and honest about the economics of the project; and, as a result, has been able to focus on the issues that really mean the most to the neighborhood, such as parking, waste management, sidewalks, stormwater runoff, and how the development fits with the rest of the area. The neighbors’ biggest concern was the parking plan for the proposed development, particularly the potential for on-street parking. Most of the similar developments in the area do not have sufficient parking on site, and the overflow parking blocks the streets and causes additional traffic. Ms. Daley stated that she believes that the parking configuration for the proposed development is commendable, as it moves parking out of sight and provides more spaces than any of the other new developments in the neighborhood. She added that the minimum setbacks are necessary to allow for that parking configuration.

Ms. Daley stated that she and her neighbors would prefer not to have additional high-density residential development added to their neighborhood, but the proposed development plan does address the issues they face as best as possible. She said that she was glad to be present in support of this request.

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Rebuttal Comments: There were no rebuttal comments offered.

Zoning Action: A motion was made by Mr. Berkley, seconded by Mr. Wilson, and carried 8-0 (Blanton, Brewer, and Drake absent) to approve MARV 2014-8, for the reasons provided by staff.

Variance Action: A motion was made by Mr. Berkley, seconded by Ms. Mundy, and carried 8-0 (Blanton, Brewer, and Drake absent) to approve the five requested variances, changing #4 according to match the staff's recommendation as listed in the supplemental staff report, and subject to the recommended conditions.

Development Plan Action: A motion was made by Mr. Berkley, seconded by Ms. Mundy, and carried 8-0 (Blanton, Brewer, and Drake absent) to approve ZDP 2014-29, subject to the first nine conditions as listed in the revised staff recommendation, deleting #10.

## VII. COMMISSION ITEMS

- A. **INITIATION OF ZONING MAP AMENDMENT** - Mr. Sallee stated that the staff would like to request that the Planning Commission not take action on this item at this meeting. He said it would be discussed further at a future work session. The Commission took no action.

*Note: Chairman Owens declared a brief recess at 3:02 p.m. The meeting reconvened at 3:08 p.m.*

- B. **BOAR 2014-1: JOSEPH H. CLARK & JOSEPH P. CLARK** – an appeal of the Board of Architectural Review's denial of a Certificate of Appropriateness for a 2-story exterior elevator addition at 458 W. Third Street.

The Staff Recommends: **Disapproval** and that the decision of the BOAR be upheld, for the following reason:

1. The denial of a Certificate of Appropriateness by the Board of Architectural Review is consistent with their charge in determining appropriateness of requested alterations to a property, based on the Design Guidelines established by the local Historic Preservation Commission, specifically Guidelines II.A.4.A. and II.A.4.F., as they apply to the construction of a 2-story elevator addition near the front of property at 458 W. Third Street.

Staff Presentation: Ms. Rackers began the staff's presentation by entering into the record a letter of opposition from Ms. Win Meeker, who is a resident of the Northside area. She briefly oriented the Commission to the location of the subject property on the south side of West Third Street, east of Jefferson Street. She noted that the subject property is located within the Northside Historic District. The appellants in this case are father and son, and the father is the owner of the property.

Referring to an aerial photograph of the subject property, Ms. Rackers stated that the property is zoned R-2, with an H-1 overlay. She said that it contains approximately 31,000 square feet, and is one of the larger properties on the street. The residence is a two-story brick with an attic and basement, and is just over 4,400 square feet in size. According to the Property Valuation Administrator's records, the house was constructed in 1880.

Ms. Rackers stated that the appellants are appealing the Board of Architectural Review's (BOAR) decision to deny a Certificate of Appropriateness for a two-story exterior elevator, which was proposed to be located near the rear of the residence, but in front of a kitchen addition that was constructed in 1907. The appellants went through two BOAR conceptual reviews of the proposed elevator, in May and September of 2013. During both of those reviews, the BOAR recommended that they either locate the elevator interior to the house, or in the rear of the structure; and that they use a more contemporary design in order to not create a false sense of history. At the BOAR hearing, the younger Mr. Clark presented a redesigned, more contemporary elevator extension, but it was still depicted as being located in front of the kitchen. At that hearing, in December 2013, the BOAR denied a Certificate of Appropriateness (COA) for the proposed elevator.

Ms. Rackers explained that it appears from the aerial photograph that the kitchen extension of the house is at a 0' setback from the property line. The elevator is proposed to align with the kitchen extension and extend forward approximately 11', with the front side located about 59' from the front property line and 30' from the front of the house.

Ms. Rackers stated that, in the Historic Preservation staff's presentation to the BOAR, they opined that the more contemporary elevator design was in keeping with the Design Guidelines, since it is typically preferable for new construction to be contemporary in style, rather than trying to imitate the character of the original structure. The staff contended, however, that the proposed location of the elevator, which is highly visible to the front of the property, was too visually intrusive and it would result in a loss of the historic material of the structure. Ms. Rackers said that the staff recommended disapproval, and the BOAR upheld that recommendation. There were several Design Guidelines that were referenced in their staff report, as well as the Design Principle for room additions, which states:

"When planning additions, the best approach is to place the additions where they will have the least impact on the building's form and plan. The rear of buildings is the best location for the addition of rooms or wings."

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The HPO staff also referenced two particularly applicable Design Guidelines:

“Additions are most appropriately located at the rear of buildings.”

“Additions should be built in a manner that avoids substantive removal or loss of historic materials, and which does not damage or destroy the main architectural features of the building.”

Ms. Rackers said that there was a great deal of discussion during the hearing between the appellant and the BOAR, most of which centered on the location of the elevator. The BOAR members indicated that the concept of the elevator was not an issue, but they were concerned about its proposed location along the side property line. The kitchen addition is already located in very close proximity to the house next door, and the BOAR members believed that the addition of the proposed elevator could exacerbate an existing bad situation. The BOAR asked the appellant to place the elevator at the rear of the house, but the appellant indicated that that would be problematic due to the location of the utilities and plumbing in the kitchen addition. The appellant noted that he was also concerned that locating the elevator at the rear of the structure could result in the loss of two healthy trees. One of the BOAR members opined that it was more important to maintain the integrity of the house, even if it resulted in the sacrificing of those trees.

Ms. Rackers stated that the BOAR members agreed unanimously that the proposed elevator location was not appropriate for the house or the neighborhood. They urged the appellant to explore more options, and to reconsider locating the elevator at the rear of the structure or interior to the house by working around the plumbing and utility connections. In response, he indicated that they (he and his father) believed that the proposed location was in keeping with the historic structure and the streetscape, and that it would not detract from either. The appellant noted that he had made a specific effort to work the architecture into the space and create a unity with the architectural details of the house.

Ms. Rackers said that the appellants contend, as their reason for this appeal, that the design of the proposed elevator does meet the intent of Design Guidelines, and any exception to those Design Guidelines was done in the best interest of the house and its surroundings. The appellants contend that the location recommended by the BOAR would have a more detrimental effect on the house and the property, and that the Design Guidelines cited by the staff are at odds with the unique development of the property. The appellants also contend that they were denied without substantive reason.

Ms. Rackers stated that the BOAR's recommendations have been consistent throughout the process: through two conceptual reviews, they recommended that the elevator be located either interior to the house or at the rear of the structure. In reviewing this case, the Planning staff could not find that they or the Historic Preservation staff erred in their interpretation of the Design Guidelines. They assessed the situation correctly, and applied the Design Guidelines appropriately with regard to the elevator location. Ms. Rackers said that the staff can appreciate the appellants' concerns about disrupting the utilities, plumbing, and trees; but the staff believes that the BOAR was consistent in their charge, which is to interpret and apply the Design Guidelines. She stated that the staff is recommending that the Planning Commission uphold the BOAR decision, for the following reason:

1. The denial of a Certificate of Appropriateness by the Board of Architectural Review is consistent with their charge in determining appropriateness of requested alterations to a property, based on the Design Guidelines established by the local Historic Preservation Commission, specifically Guidelines II.A.4.A. and II.A.4.F., as they apply to the construction of a 2-story elevator addition near the front of property at 458 W. Third Street.

Commission Question: Mr. Owens asked if the 11' to which Ms. Rackers referred was the width or length of the proposed elevator. Ms. Rackers answered that 11' refers to the length of the elevator, measured from the back to the front. Mr. Owens asked what the depth of the elevator would be. Ms. Rackers responded that the depth was 4'11".

Historic Preservation Presentation: Amelia Armstrong, Division of Historic Preservation, entered into the record Article 13 of the Zoning and the Design Guidelines. She noted that Bettie Kerr, Director, had distributed copies of the staff report, the record of the BOAR hearing, and copies of the Design Guidelines to the Commission members as well.

Ms. Armstrong displayed the following photographs of the subject property: 1) a view of the property toward the southwest; 2) the side of the house and proposed location of the elevator; 3) a view of the west side of the house; 4) a closer view of the proposed elevator location, noting the kitchen addition; 5) a view from the back property line toward the proposed elevator location; 6) another view of the proposed elevator location; 7) the first floor plan of the building, noting the proposed elevator location; 8) the second floor plan, noting the proposed elevator location; 9) an elevation of the elevator addition, noting that it is proposed to have similar materials as the existing addition on the first story, with tempered glass and fiber cement on the second story; 10) a west elevation of the proposed elevator addition; 11) a south elevation of the proposed elevator, noting the door proposed to the first-floor kitchen addition; and 12) the rear of the structure, noting the tree that would need to be removed if the elevator was located there, as recommended by the BOAR.

Ms. Armstrong stated that the staff had met with the appellant on several occasions during this process, and attempted to accommodate their need for the elevator addition while staying within the Design Guidelines. She said that the appellants had not

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submitted a plan for any other location for the proposed elevator, so the Historic Preservation staff was requesting that the Planning Commission uphold the BOAR's decision to deny a COA for this request.

Appellant Presentation: Joe Clark, appellant, stated that he was also representing his father, Joe Clark. He displayed the following photographs: 1) a view of the house from across the street; 2) the wraparound porch, which was added in 1907; 3) the sunroom at the rear of the house, which was added in 1930; 4) the front portion of the house, which contains the bulk of the architectural detailing; 5) another view of the main body of the house; 6) three individual alternate views of the main body of the house; 7) the area recommended by the BOAR for the construction of the elevator, alongside the 1907 kitchen addition; 8) the rear of the house, noting the magnolia and crape myrtle trees that would need to be removed in order to locate the elevator in the rear, both of which were planted in 1980; 9) view of the original two-story townhouse portion of the structure; 10) the area proposed for construction of the elevator; 11) the kitchen addition, noting that it is situated at the rear of an unadorned brick wall with no architectural features; 12) the kitchen addition, noting its location 67' from the front property line and 6' from the rear of the house; 13) a diagram depicting the historical development of the property, noting that all architectural elements face the east; 14) a diagram of the volume addition of the proposed elevator; 15) the site plan for the proposed elevator, noting that it would comprise only a 2.5% addition to the existing square footage of the house; 16) the elevations of the proposed elevator, some of which were created after the second conceptual review by the BOAR; 17) additional elevations, noting that the material palette was designed to respond to the tight space between the subject property and the adjoining house; 18) renderings that were drafted following the two conceptual reviews by the BOAR; and 19) renderings comparing the existing area between the two houses, and the view of the proposed elevator. Mr. Clark stated that, at the second conceptual review, the Chair of the BOAR indicated that the proposed plan was strong; however, in order to obtain the COA, he would need to return with a plan that was demonstrative of awareness of the neighboring property. He said that the project was detailed in such a way that it would take a formal, elegant approach to a previously underutilized space, and try to make it functional and appealing.

Mr. Clark said that the Design Guidelines state that: "Additions are most appropriately located at the rear of buildings." He stated that he and the senior Mr. Clark believe that the proposed elevator location is, fundamentally, the rear of the building, since its location is directly opposite all of the main architectural features of the house. The building has an asymmetric form relationship to the street, with most of its development on the eastern side. The site that was chosen for the elevator is a long, unadorned brick wall, which has no real bearing on any of the architectural aspects of the main body of the house. Mr. Clark said that the front edge of the proposed addition would be 56' from the front property line, and symmetric with the 1930 addition. He stated that he and the elder Mr. Clark therefore believe that the quoted Design Guideline does not apply to this project, since the proposed elevator location is, in their opinion, the rear of the house.

Mr. Clark read further from the Design Guidelines: "Additions should be built in a manner that avoids substantive removal or loss of historic materials, and which does not damage or destroy the main architectural features of the building." He opined that construction of the proposed elevator would in no way destroy any main architectural feature of the building. He said that the kitchen volume, viewed from the west, is the least defined element of the entire structure; the proposed elevator would take that underutilized area and make it better. The kitchen addition is a basic, poured concrete foundation, covered in clapboard siding, with off-the-shelf decorative elements. On the east side of the structure, where the Historic Preservation staff proposed that the elevator should be located, the same volume is faced with a 13" wide limestone foundation and double brick wall, which was constructed in the 1930s to serve as an outdoor room. The brick removed for the elevator entrance on the first floor will be used in the foundation for the project, and all of the existing windows on that side of the house will be maintained and incorporated into the project. No existing visible materials would be destroyed or lost. Mr. Clark stated that the suggestion by the Historic Preservation staff to place the elevator in the rear corner of the east wall of the kitchen would destroy three historic windows and would necessitate the removal of two 35-year-old trees.

Mr. Clark said that the Design Guidelines state that "additions should have the least impact on the building's form and plan." He and the senior Mr. Clark believe that the proposed elevator design and location would have the least impact, in light of the existing architecture of the house.

Commission Question: Mr. Owens asked how far the proposed elevator would be located from the side property line. Mr. Clark answered that it would align with the edge of the kitchen addition, which is 4" off the property line. Mr. Owens asked if any renovations to the property are proposed in addition to the elevator construction, to which Mr. Clark responded in the negative. He added that placing the elevator in the interior of the house would require moving the existing furnace system. He said that, since the house was added to somewhat haphazardly, it would be difficult to modify just one small portion of the house.

Mr. Cravens asked if the bay window on the neighboring house was correctly depicted on the site plans. Mr. Clark answered that it was depicted correctly, at 39" from the existing bay of the kitchen at the top, and 36" from the projection of the cornice. Mr. Cravens asked if the neighboring house had an entrance on that side as well, to which Mr. Clark replied affirmatively. He added that, for the past 20 years, the house was divided into apartments. However, since the house has been renovated for single-family use, that side entrance is seldom utilized. Mr. Cravens asked if the proposed elevator would meet the applicable fire codes, since it would be located only 4" from the property line. Mr. Clark answered that the use of tempered glass and hardie plank fiber cement was proposed in order to meet those codes.

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Opposition Comments: Nathan Billings, attorney, was present representing Jay Farmer, who owns the adjoining property at 462 West Third Street. He distributed to the Commission members copies of Mr. Farmer's letter of opposition to the BOAR.

Mr. Billings stated that the Planning and Historic Preservation staff presentations had captured the essence of his client's opposition to this appeal, which is primarily the adjacency of the elevator location to his bay window. Mr. Billings added that the side entrance is used sometimes, contrary to Mr. Clark's assertion.

Ron Jackson, Vice-chair of the BOAR, stated that they did do two conceptual reviews of the proposed elevator with the appellants. He said that the location of the elevator was discussed at length, and the appellants were strongly encouraged to consider other locations. The BOAR felt that, although it was important to the appellants to maintain the trees, it would be preferable to sacrifice them in favor of "being neighborly" and following the Design Guidelines.

Mr. Jackson said that the BOAR members did agree that the senior Mr. Clark should be able to have an elevator in his home, and they tried to work diligently with both appellants to find an appropriate solution. He stated that the BOAR does not believe that the proposed location is the best solution, and they request that the Planning Commission uphold their decision to deny a COA for this application.

Steve Bale, 466 West Third Street, stated that he would like to express his support for the staff recommendation of disapproval of this appeal. He said that he empathized with the appellant's need for an elevator, because his bedrooms are located on the second floor of his home as well; but he does not believe that an elevator is an appropriate solution. He added that his primary concern is the "undesirable precedent" that could be set if this application is approved, since he does not believe it would be appropriate "to have elevators all over Northside."

Commission Question: Mr. Penn asked if Mr. Bale would be opposed to the elevator if it was located at the rear of the house. Mr. Bale answered that he would still be in opposition, although it would likely be determined to be within the Design Guidelines and approved by the BOAR.

Appellant Rebuttal: Joe Clark Sr., appellant, stated that he currently uses a walker; if his condition continues to worsen, he will be required to use a wheelchair. He said that he tried to find the best location for the elevator with regard to the design of the house and the needs of the neighborhood, and he sincerely believes that the proposed design has accomplished that.

Mr. Clark stated that the difficulty in locating the elevator at the rear of the house is not the trees; rather, it would compromise the kitchen by requiring the removal of one of the windows. He said that locating the elevator on the west side of the house would involve simply extending the kitchen addition. Due to the deep setback from the street and the narrow passage between the two houses, the elevator could easily be disguised from view of the street by planting just one evergreen tree. Mr. Clark said that the proposed elevator would also help to make the west side of the house more attractive.

Mr. Clark stated that the next-door neighbor's house was constructed in 1882, and the kitchen addition to his house was constructed in 1907, so it did not appear that there had been any concerns about placing the addition within 4" of the property line.

Mr. Clark said that he did not agree with Mr. Bale's contention that houses in the Northside neighborhood do not need elevators, because they are one of a number of different types of improvements that homeowners might want to make to their residences. He opined that the H-1 overlay zone was "being used incorrectly" to prohibit homeowners from having any leeway as to what types of changes they can make to their properties.

Mr. Clark stated that he has lived in three parts of the Northside neighborhood since he came to Lexington in 1957, and he purchased the subject property in 1978. He has tried to improve the property by planting approximately 60 trees around the house. Mr. Clark does not believe that the proposed elevator would harm anyone, and it would be much more attractive architecturally than the existing brick well on the west side of the property.

Mr. Clark said that his house is large, and has many rooms; but the rooms themselves are small. He stated that, following his accident in February 2013, he was prohibited from going up stairs, although the only shower in the home is located on the second floor. The reason for placing the proposed elevator on the exterior of the building was to conserve space within the house, since constructing the elevator within any of the existing rooms "would ruin their use." Mr. Clark stated that placing the elevator in the interior of the house would compromise it, and he would appreciate the Planning Commission's consideration of this appeal in order to allow it to be constructed as proposed.

Commission Questions: Ms. Mundy asked if there were two sets of stairs inside the house; and if so, whether it would be possible to construct the elevator in one of the stairwells. The younger Mr. Clark answered that that option was considered, but it was determined to be impossible due to the configuration of the landings and the access to the basement steps. Ms. Mundy stated that it appeared that the rear stairwell would be a good location for the elevator, since it opens directly to the second floor hallway. The elder Mr. Clark responded that the stairwell area is too small to accommodate the elevator. The younger Mr. Clark added that this proposal was first presented to the BOAR in May of 2013; if, at any point in the process they had felt comfortable constructing the elevator inside the house, they would have done so.

Discussion: Mr. Owens stated, with regard to the close proximity of the kitchen addition to the property line, it was likely that there were few regulations in place when the addition was constructed in 1907. He said that his primary concern was the proximity of the proposed elevator to the house next door, since it is important to consider the impact on other residents as well. Mr. Owens stated that he would not be willing to approve the elevator at the proposed location, and opined that the rear of the house would be the best location for it.

Mr. Cravens stated that he thought the proposed elevator design was acceptable, but he was not comfortable with its proximity to the bay window of the house next door.

Mr. Penn stated that he did not like to overturn a decision of the BOAR without a significant reason to do so, and he was struggling to find such a reason in this case. He said that, in historic districts, "the easiest option is not always the best way to do it for the rest of the neighborhood." He added that he was inclined to support the staff recommendation, because he believes that it is possible to construct the elevator at the rear of the house.

Action: A motion was made by Ms. Plumlee, seconded by Ms. Mundy, and carried 8-0 (Blanton, Brewer, and Drake absent) to uphold the decision of the Board of Architectural Review and recommend disapproval of BOAR 2014-1.

**C. BOAR 2014-2: JOE COSTA** – an appeal of the Board of Architectural Review's denial of a Certificate of Appropriateness for demolition and reconstruction of a kitchen addition at 461 N. Limestone Street.

Staff Presentation: Ms. Rackers oriented the Commission to the location of the subject property at the corner of West Fifth and North Limestone Streets, noting that it is part of the Mulberry Hill Historic District. She said that the property is zoned Planned Neighborhood Residential (R-3), with an H-1 overlay, and it is surrounded by residential uses, including several apartment complexes.

Ms. Rackers said that the property, which is called Rose Hill, contains a large, one-story brick residential structure. The Board of Adjustment (BOA) approved it for a conditional use as a bed & breakfast in 1994, and it was used as such throughout the 1990s. The residence contains 3,964 square feet, including the 16' by 19' square-foot kitchen, which is now proposed for demolition. The kitchen is considered an attached outbuilding, since it is not located within the shell of the house, but is connected by a hallway. Referring to an aerial photograph, Ms. Rackers noted the locations of two additional outbuildings on the property: a two-story building that was the original slave quarters and kitchen, and a smokehouse. Those two buildings were constructed in 1812, along with the house. The kitchen was built approximately 80 to 100 years later. Ms. Rackers stated that the appellant proposes to demolish the kitchen structure, which is in severe disrepair, and replace it with totally new construction. The new kitchen is proposed to be 660 square feet in size, with a contemporary architectural style.

Ms. Rackers said that, in the Division of Historic Preservation staff's presentation to the BOAR at the hearing for this application, they indicated that Rose Hill is a significant piece of property, both architecturally and historically. The property has maintained its significance over its 200-year history, during which time it has had only six owners. It is typical of 19<sup>th</sup>-century sites in both use and design, and is typical of Central Kentucky urban estates. The property has remained largely unchanged over the years, and it is considered an anchor in the neighborhood. Rose Hill attained National Register of Historic Places status in December of 1974.

Ms. Rackers stated that, according to the record of the BOAR hearing, both the staff and the appellant consulted with Miles Miller, a local historic masonry expert, regarding the condition of the structure. The foundation of the structure is severely bowed, with cracks on both the north and west walls. The staff's primary concern in consulting with Mr. Miller was whether it would be possible to retain the south and east walls; stabilize the building; and totally renovate the structure, in order to maintain it in its historic configuration. Mr. Miller indicated that it would be possible, but the south and east walls would also need to be partially removed and rebuilt, due to the condition of the foundation.

Ms. Rackers said that, in their presentation to the BOAR, the Historic Preservation staff opined that, although the kitchen is not as old as the house, its relationship to the main building is important. The staff recommended to the BOAR that the kitchen be retained; they believe that it is integral to the complex, and that its loss would harm the history of the house, as well as the entire property. Their full recommendation was that the kitchen be repaired and renovated, replacing the shell of the old building, rather than totally demolished and removed from the property. This would entail the removal of the existing limestone and installation of concrete footers, due to the poor condition of the foundation. It would then be possible to repair the remaining structure, and re-use some of the existing brick. Ms. Rackers stated that the staff cited three Design Guidelines that supported this position: VI.A, VI.B, and VI.C. Those Guidelines state that, in cases such as this, demolition should be avoided at all possible. If demolition is allowed, it should not be to the detriment of the property or the structure itself.

Ms. Rackers said that several photographs depicting the condition of the structure were displayed on behalf of the appellant at the BOAR hearing. It was evident in the photographs that there are cracks between the walls of the kitchen, and the foundation is significantly bowed. A consulting structural engineer and architect testified at the BOAR hearing and indicated that the kitchen would need to be brought up to code, and it could probably be repaired and reconstructed. They noted, however, that it would be easier, less costly, and more probably practical to do total new construction. Ms. Rackers stated that, in their

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presentation, the staff acknowledged that it was possible that the BOAR could approve the demolition. They said that, in the event that the appellant was allowed to demolish the kitchen, the proposed design of the new kitchen would need further refinement, since it lacked architectural details and did not relate to the existing structure. The Historic Preservation staff strongly urged the BOAR not to approve demolition, since it would be contrary to the Design Guidelines and in violation of one of the sections of Article 13 of the Zoning Ordinance. In all, there were 37 Design Guidelines that were referenced in the Historic Preservation staff report; 10 are particularly applicable in this case, all of which are listed in the staff report.

Ms. Rackers said that Section 13-7(c)(1) of the Zoning Ordinance states that:

“...the BOAR can approve a Certificate of Appropriateness for demolition of a structure only one of the following conditions are determined to exist:

- a) the application is for demolition of an addition, for a portion or a building, or for an accessory structure which is not significant to the principal structure, site, landmark, or district, and the approval of the application would not adversely affect those parts of a building, site, landmark or the historic district which are significant;
- b) the application is for the demolition or moving of a building or portion of a building which does not contribute to the character of, and will not adversely affect the character of the property in a zone protected by an H-1 overlay; or
- c) No reasonable economic return can be realized from the property, and the denial of the application would result in the taking of the property without just compensation.”

Ms. Rackers stated that, in a discussion between the BOAR and the appellant's attorney, he indicated that they did not intend to make a takings argument, so item “c” does not apply in this case. Items “a” and “b” do apply, however, and there was a great deal of discussion between the BOAR members and the appellant's attorney, who contended that the kitchen addition was not significant, in an effort to persuade the BOAR to permit the demolition. Those reasons were: 1) the age of the kitchen as it relates to the original structure, which is approximately 80-100 years older; 2) the kitchen addition is not specifically mentioned in the written history of Rose Hill; 3) age of a building does not necessarily make it significant; and 4) because the kitchen was added later, it should be considered as accessory to the main house, rather than part of it.

Ms. Rackers stated that the original kitchen was located in an accessory, detached structure (i.e., within the 2-story outbuilding on the property). There has never been a kitchen in the main house, other than the addition that is proposed for demolition. The structure that the appellant contends is insignificant has been the location of a significant part of the house for over 100 years. The staff does not believe, therefore, that the kitchen is an insignificant part of the house. With regard to the argument about the kitchen being an accessory structure, Ms. Rackers said that all of the outbuildings, whether attached or detached, are accessory to the primary structure; and following that logic, it could be said that all of the outbuildings are insignificant and could be demolished, which is not the case.

Ms. Rackers stated that, after a long discussion, the BOAR determined unanimously that the structure was significant; however, they voted 3-1 to not allow demolition. They did not make a recommendation about the design of the new construction. In the past week, the Planning staff received a copy of the condemnation notice from the Division of Code Enforcement, which was dated March 6, 2014. That notice stated that the building “is in enough disrepair to be condemned for human occupancy,” and it gave the owner 30 days to either make the necessary repairs, or obtain a structural engineer's analysis to determine if the repairs could be made. The notice indicated that the Division of Code Enforcement found the structure to be “dangerous to the life, health, and safety of the occupants,” and noted that it is likely to collapse. Ms. Rackers said that the kitchen has not been used as such for several months, however, so it is unlikely to collapse on a person at this point. She stated that, during the BOAR hearing, one of the Board members, who has worked with similar situations, stated that demolition should not be a foregone conclusion; there are ways to repair the structure and bring it up to code, but it would be more difficult and costly than demolition and replacement.

Ms. Rackers stated that the staff reviewed this case and did not find any flaws in either the Historic Preservation staff's or the BOAR's interpretation or application of the Design Guidelines or of Article 13 of the Zoning Ordinance. She said that the staff is recommending disapproval and that the Planning Commission uphold the recommendation of the BOAR, for the following reasons:

1. The denial of a Certificate of Appropriateness by the Board of Architectural Review is consistent with their charge in determining appropriateness of requested exterior changes, based on the design guidelines established by the local Historic Preservation Commission (specifically those cited in the body of this report), as they apply to the removal of the “old kitchen” (which was determined by the Board to be a significant structure) and replacement with new construction at 461 North Limestone.
2. Although the kitchen building was not original to the structure, it was constructed prior to the printing of the 1907 Sanborn map of Lexington. Therefore, its age (over 100 years) has rendered it an historic element of the property that has been integral to its evolving history over time. At their public hearing, the Board, after considerable discussion, determined that the structure is significant to the property and the historic district. Therefore, its removal from the property would go against the design guidelines, as well as constitute a violation of Article 13 of the Zoning Ordinance, which states that the BOAR may

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approve demolition of a structure if and only if the building is not significant to the property or the historic district in which it is located.

3. There is no kitchen within the shell of the primary structure; and, according to the project architect, there never has been. Historically, the only kitchen for the residence has been in this building or in the 2-story outbuilding that was the original servants' quarters. Based on the appellant's and his attorney's argument that the subject building is not significant because it is only accessory to the primary structure and should therefore be demolished due to its poor condition, it would logically follow that the 2-story outbuilding and the smokehouse (which, by Zoning Ordinance definition, are accessory buildings) are not significant, although in good condition. Following this line of thought, either the 2-story detached outbuilding or the smokehouse, original to the property, could therefore be approved by the Board for demolition, if requested, depending on circumstances; and this is not the case. Two of the accessory buildings, whether original to the property or not, and whether attached to the main structure or not, have provided space for a significant use (i.e., kitchen) for the residents (and guests) of the property, particularly during the time it was used as a bed and breakfast. Additionally, both accessory structures, as well as the smokehouse, have contributed to the history of the primary structure and the property as they have evolved over time.

Historic Preservation Presentation: Ms. Kerr began the Historic Preservation staff's presentation by opining that Rose Hill is an "exquisitely significant" property in Lexington-Fayette County, and that there are few others like it. She said that it was one of the most intact urban houses with historic outbuildings in Central Kentucky, partly because of the longevity of the first two owners, which covered 170 years of the property's history. The more recent owners have been respectful of the property, as well. Ms. Kerr noted that the property is on the National Register of Historic Places and is part of the Mulberry Hill historic district, where it serves as one of the anchors of the district. Ms. Kerr stated that the Historic Preservation staff and the BOAR had had a great deal of discussion on a number of occasions in consideration of this proposal, in accordance with Article 13 and the Design Guidelines.

Ms. Kerr displayed the following photographs of the subject property: 1) a 1934 photo, taken at the time of its documentation for the Historic American Building Survey, which was a Federal program that documented significant pieces of architecture across the country; 2) a recent view of the property, noting that its setting is still intact; 3) the "kitchen L" portion of the building that is proposed for demolition; 4) the rear elevation of the kitchen building, noting the double doors, which are paired on the other wing of the building; 5) the elevation to the south, noting the evident moisture problems in the brickwork, which have existed for a long time; 6) the view from the south, toward the front of the property; 7) the double doors on the north elevation; 8) the same side, noting some of the problems caused by moisture wicking; 9) one of the walls that will have to be removed, noting that the masonry is moving out from the foundation; 10) the foundation in the interior cellar area, with a 10"-12" bow; and 11) rear elevation with the kitchen "L" to the right.

Ms. Kerr stated that the Design Guidelines were carefully considered in this case, with regard to both the proposed demolition and the new construction. She said, with regard to the new construction, that it would be very important for it to be compatible with the historic structure in terms of scale, volume, roof forms, placement on the site, materials, and window and wall treatments. As proposed, the new construction does not meet the Design Guidelines; the window openings and roof shape, as well as the relationship of the openings to the historic structure's cornice, would not be compatible with the existing house.

Ms. Kerr said that the contemporary approach itself is not inappropriate, but the articulation of how it is designed could not be approved under the Design Guidelines; the Historic Preservation staff believes that the proposed roof form is particularly problematic. She added that the plans for the proposed new construction had been distributed to the Commission members, and she referred to those plans and renderings on the overhead projector. The high point of the shed roof is proposed to be oriented toward the center core of the rear of the house, with the lower end to the south. Ms. Kerr stated that one of the discussions at the BOAR hearing centered on the windows of the addition, which were first proposed to be large, single-light panes. She said that one of the signature characteristics of Rose Hill is how beautifully and delicately detailed the building is, both the interior and exterior. One of the concerns about the new addition has been that it appears industrial and "heavy-handed," with a lack of attention to elegance that is part of the signature of the 1812 house.

Ms. Kerr stated that the history and architectural significance of Rose Hill has been recognized by many scholars and lay people alike, including its documentation by the Historic American Building Survey. She said that the proposed demolition would be detrimental to the building and its site; and the new construction, as proposed, is not appropriate or in accordance with the Design Guidelines. The Historic Preservation staff would request that the Planning Commission uphold the BOAR decision and deny this application as it has been submitted.

Appellant's Presentation: Nathan Billings, attorney, was present representing the appellant. He distributed to the Commission members a packet of exhibits containing copies of the appellant's letter of support for this application, and the PowerPoint presentation that was made at the BOAR hearing.

Mr. Billings stated that there are two issues before the Planning Commission in this case: 1) whether or not it is appropriate to demolish the existing structure that is the subject of this appeal; and 2) whether the new addition is appropriate under the Design Guidelines. He said that Mr. Penn had indicated, during the previous BOAR hearing today, that he was inclined to follow the recommendation of the BOAR unless there is a significant reason to overturn it. Under Article 13-8, the standard before

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the Commission is a *de novo* review of the record, which means that the Commission should make findings based on the evidence that is presented at this hearing.

Mr. Billings said that Article 13-7 states that it is appropriate to demolish the structure if either: 1) it is not significant to the principal structure; or 2) it does not contribute to the character of the structure. He said that his role as an attorney consists of facts, law, and the application of the facts to the law. He believes that, in this case, the facts are irrefutable, and no counter-vailing evidence has been presented to the contrary; however, the Historic Preservation staff and the BOAR have given their opinions, not facts. The appellant contends that the first fact of this case is that the existing kitchen structure is not original to the property. Referring to the original plan for the house, Mr. Billings noted the locations of the original house, the slave quarters, and a smokehouse. Displaying a photo of the existing kitchen and a Sanborn map, he noted that that map is the only historical document that depicts the existing kitchen structure.

Mr. Billings stated that he had located six different historical treatises, one of which was the document that was filed to place the property on the National Register of Historic Places, but none of which document the existing kitchen. All of those documents do, however, show a number of things that are significant, including the original structure; the original two-story kitchen; the smokehouse; the slave quarters; and the ice house. The appellant contends that the statement that the staff made in their report that, under the appellant's arguments, any of those ancillary buildings would be appropriate for demolition, is a "red herring." The appellant does not believe that it would be appropriate to demolish any of those structures, since they relate to the original house and are documented by the six historical documents, but two of them have been demolished to date. All six of those documents discuss the house and other elements of the property in significant detail, but not one of them references the existing kitchen, which is the only thing that is attached to the main structure.

Referring to the historical drawing of the house, Mr. Billings noted that there was a porch connector from the original house to the slave quarters. The new kitchen is proposed to "illuminate" that original porch, with a narrow portico from the main structure to the kitchen, rather than placing the kitchen directly adjacent to the house. The appellant contends that, when the existing kitchen was constructed, it negatively affected the value of the principal structure, and that it would not be approved by the BOAR if it were proposed under the current Design Guidelines.

Mr. Billings stated that there is no evidence that the BOAR, the Historic Preservation staff, or the Planning staff can present that could reflect that the kitchen has any historical value, except to note that it is old. He noted that all of the evidence presented by the appellant, however, ignores the existence of the kitchen, which is the best possible proof that it is not significant to the property.

Mr. Billings said that, in early March, the Division of Code Enforcement issued two notices, finding that the kitchen structure should be condemned, since it is no longer fit for human habitation. Displaying several photographs of the interior and exterior of the kitchen, he noted the bowed walls and cracked brick, with the basement walls collapsing inward. The Historic Preservation staff asked the appellant to provide expert reports on the safety of the kitchen, so the appellant obtained opinions from Miles Mille and Chris Kelly.

Note: Mr. Owens left the meeting at 4:47 p.m., and Mr. Cravens assumed the role of Chair.

Jason Huber, Brown & Kubican, PSC, stated that he had observed the issues with the kitchen structure. He said that it was his professional opinion that it could not be saved, and that the exterior walls would need to be demolished down to the foundations, since they were load-bearing. He added that the north, south, and west foundation walls were all found to have bowing.

Mr. Billings stated that it was easy for staff and BOAR members to say that the structure could be repaired, but those statements are "hypotheticals in a vacuum." Only inspection of the site by a professional engineer could determine whether or not it could be repaired, and the Historic Preservation staff, the Planning staff, and the BOAR have not presented any evidence that contradicts the opinions from professional engineers submitted by the appellant.

Preston Worley, attorney, stated that the Planning and Historic Preservation staff were "trying to tell a story that is not there." He said the staff report asserts that the existing kitchen might have a part in the story of Rose Hill, but no one knows that story. No one knows the exact age of the kitchen, for what purpose it was built, or for how long it had been used as a kitchen prior to its condemnation. Mr. Worley opined that, if the kitchen was significant, it would have been mentioned as "part of the Rose Hill story" in all of the historical documents, rather than just the Sanborn map, which was created for the purpose of fire insurance. He said that, in trying to "create an illusion of significance" for the kitchen addition, the BOAR and the Historic Preservation staff have noted a number of things that might have happened there, but they have "misquoted history." At the BOAR hearing, member Sarah Tate stated that, since the kitchen was built within a certain time frame, it might have been used as domestic servant quarters. Mr. Worley said that it is likely that the kitchen would not be approved by the BOAR today, since it imitates the history of the main structure.

With regard to the condemnation notice from the Division of Code Enforcement, Mr. Worley stated that Mr. Penn's "significant reason" for overturning the BOAR recommendation in this case should be human safety, and the safety of one of the most iconic homes in Lexington-Fayette County. He said that, if the kitchen falls in on itself, it could destroy that portion of Rose Hill

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and either injure or kill someone. He read the following from the condemnation letter: "...all or part has been found to be dangerous to the life, health, or safety of its occupants." Miles Miller and Chris Kelly both indicated that, prior to any form of restoration, all four walls and foundations of the existing kitchen must be demolished, either as a whole or in part. At the BOAR hearing, a Board member asked "if this type of thing could be done," to which Mr. Kelly responded that it could, but this specific structure could not be restored without demolition taking place. Following the issuance of the condemnation notice, Mr. Huber reviewed the structure and agreed with Mr. Kelly's assessment.

Mr. Worley stated that the appellant is being asked to do the impossible—"to restore a structure that cannot be restored, or to endure a structure that is uninhabitable." The appellant wants to continue to be a good caretaker of Rose Hill, and he needs a kitchen that is safe, and that contributes to the character of the structure and the historic district. Mr. Worley asked the Planning Commission to protect the safety of Rose Hill and its inhabitants and caretakers.

Mr. Billings stated that the questions that must be answered with regard to the demolition of the existing kitchen are 1) whether or not the kitchen is significant; and 2) whether the demolition will adversely affect the character of the building. The appellant contends that the documentation shows that the kitchen is not significant, so its demolition would not adversely affect the character of Rose Hill. Even if a finding could be made to the contrary, the Division of Code Enforcement has determined that the kitchen is unsafe, and asked the appellant to obtain a letter from a structural engineer indicating whether or not the structure could be repaired. That engineer determined that the kitchen could not be repaired; the foundations are in such disrepair that the walls must be removed and rebuilt from the ground up. Mr. Billings said that the Commission could make findings today that the kitchen is not significant, and therefore demolition is appropriate; or, under the Code Enforcement order, the kitchen must be removed, even if it is believed to be significant, due to life, safety, and health issues. He asked that the Commission issue findings and a conclusion that would allow a demolition permit to be issued.

Nick Wiley, Integrity Architecture, stated that the design for any property such as Rose Hill must be thoughtful, respecting the history, delicacy, and beauty of the buildings. Referring to renderings of the proposed new kitchen, he said that he proposed a similar configuration in order to "draw cues from Rose Hill" by taking lines from the existing windows, sills, foundations, and window proportions. The BOAR encourages contemporary design for additions to historic structures; and the proposed kitchen design is contemporary, characterized by glass, exposed materials, and steel columns to reference the historic columns at the front of the main house. Mr. Wiley said that he believes that the glass on the proposed new kitchen will reflect the main house, and the transparency will allow the kitchen addition to "disappear," while the principal building takes center stage. He added that the proposed kitchen will keep the intent of the original building, and the structure of Rose Hill as a whole.

Mr. Billings stated, with regard to Ms. Kerr's comments about shed roofs, that there are two shed roofs on the property at Ashland, the historic Henry Clay estate. He displayed two photographs of those roofs. There have also been shed roofs approved for new construction in the Northside and Mulberry Hill historic districts recently.

Mr. Billings stated that the BOAR did not have any discussion about the proposed new construction; they made only one finding, which was to disapprove the demolition of the existing kitchen.

Commission Question: Mr. Cravens asked why the appellant's exhibit packet contained a drawing of the proposed kitchen with a hip roof. Mr. Billings responded that it was part of a series of drawings that were presented to the BOAR during a conceptual review, comparing how the kitchen would look with a hip roof, as opposed to a shed roof.

Staff Rebuttal: Ms. Rackers stated that she had prepared a rough transcript of the video from the BOAR hearing, and Chris Kelly stated that it would be very difficult to repair the existing kitchen, but he did not say that it could not be done, as Mr. Billings indicated.

With regard to Mr. Billings' comment about the use of a "red herring," Ms. Rackers said that, based on the appellant's argument that the kitchen was built after the main structure, and therefore accessory and not significant, that same reasoning could result in all of the other smaller buildings on the property being labeled as insignificant. She stated that age and use of the building were also considered in determining the significance of a building. She added that the fact that the structure was the only kitchen on the property for over 100 years makes it significant.

Ms. Kerr stated that there are differences between restoration and renovation; restoration replaces the building to the condition most closely resembling the original structure, while renovation involves installation of modern conveniences, such as indoor plumbing. She said that she has been an architectural historian for 35 years, and it is not uncommon for historic buildings to have a wall removed and rebuilt, although the existing kitchen does need more than the typical restoration. Ms. Kerr stated that similar projects have been done in Lexington, many by Miles Miller, so she does not believe that it is accurate to say that this project cannot be done.

With regard to Mr. Billings' comment about BOAR member Sarah Tate's comments, Ms. Kerr said that Ms. Tate is a licensed architect who has practiced for over 40 years, and she has impeccable credentials. She added that Ms. Tate has been involved with renovation projects of this nature, and she spoke from her professional experience.

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Ms. Kerr stated that, contrary to Mr. Billings' assertions, the main wall of the house is not in danger of collapsing due to the state of disrepair of the kitchen addition. She stated that it is, however, the responsibility of the property owner to rectify the situation in whatever manner is able to be approved through this review process. Ms. Kerr added that, should the situation continue, it would be a very bad outcome if the kitchen addition is allowed to collapse in on itself.

With regard to the comments about the Division of Code Enforcement, Ms. Kerr stated that she had spoken to the Director, David Jarvis, about the condemnation notice that was issued for the property. She said that Code Enforcement is very open to the appellant solving this issue by the renovation of the property; they just want it resolved, as the existing condition cannot continue.

Ms. Kerr stated that the two outbuildings at Rose Hill have primarily gable roofs, with a shed roof as an adjunct roofline. She said that she used to be the director of Ashland, and is very familiar with the roofs on that property. The shed roofs at Ashland are within a totally different context than what is proposed here.

Ms. Kerr said, with regard to Mr. Billings' comments about the use of archival resources to document the subject property, that a number of the materials he referenced depicted the house as it was constructed in 1812, and what the site consisted of in its early era. They are not intended to show the changes to the property over time. Ms. Kerr stated it is not surprising that, when the Historic American Buildings documentation was done in 1934, the kitchen "L" was not documented, as it was only approximately 40-45 years old at the time. She added that she does not believe that the Commission should take any one document as an official record, but should consider them all as pieces of a puzzle.

With regard to Mr. Billings' assertions that the kitchen addition does not "have a story to tell," Ms. Kerr stated that it does not have to write its own history; it is well-demonstrated that it is a significant piece of an important property's history, and it merits preserving.

Commission Question: Mr. Penn stated that he was somewhat confused by the Design Guidelines, in that they indicate that an addition should not look like it is part of the original house. Ms. Kerr answered that that statement is not meant to be as literal as the language sounds. She said that it refers to a desire for new additions to be appropriately scaled, massed, and situated on a property. The next concerns would be the window and door openings, cornice heights, and other components that should respect the historic structure, but do not copy it or replicate it. Ms. Kerr stated that it is a challenge to have new construction address the building to which it is adjacent in a coherent and respectful sense, but not try to fool the eye. Mr. Penn stated that the proposed new addition could never be mistaken as part of the original structure. Ms. Kerr stated that it must also be compatible with the original structure. For example, the new roofline should "tuck under" the existing roofline, so that it is not more noticeable than the existing roof, which is one of the major objections to the proposed shed roof. She added that the shed roof design was discussed at the conceptual reviews, and it was strongly suggested that it should be more subtle and compatible with the existing roof of Rose Hill.

Citizen Comments: Ron Jackson, Vice-chair of the BOAR, stated that the Board believes the kitchen on the subject site is significant, and that demolishing it will adversely affect the integrity of the building. The BOAR would prefer that the kitchen be restored, so that the petitioner will be able to fully use it again.

Mr. Jackson stated that the Code Enforcement condemnation order does not order the demolition of the kitchen; it just condemns occupancy, and demands a resolution of the issue.

Mr. Jackson said that, contrary to Mr. Billings' assertions, Chris Kelly did not indicate that the building had to be demolished. He noted that it could be restored, but it would be a longer and more difficult process. He said that Rose Hill is an intact, urban historical property, and the BOAR recommendation was intended to protect it. Mr. Jackson requested that the Planning Commission uphold the BOAR decision to deny the demolition of the kitchen.

Joe Costa, appellant, requested that the Planning Commission use common sense in their decision. He said that testimony had been presented to the effect that all four walls of the kitchen would need to be removed in order for it to be restored, and he has received word from several engineers that the existing brick will not be reusable for that project.

Mr. Costa stated that he is very proud to be the caretaker of Rose Hill, and he intends to properly care for it as long as he is the owner. He said that, unfortunately, he inherited an addition that can no longer function, and he has heard no testimony that it can be restored as has been suggested. He does, however, need to build something usable; and the proposed kitchen was intended to stand out as different from the original 1812 structure. Mr. Costa stated that he is prepared to hear arguments about the merits of the proposed kitchen design; but he needs relief from a dangerous situation in which he is unable to walk into part of his own home, which Code Enforcement has determined to be uninhabitable. He asked the Planning Commission to allow him to demolish the kitchen, in order to restore it properly to its original grandeur.

Commission Comments: Mr. Penn stated that he believed that the Commission should consider two separate issues: the proposed demolition, and the construction of a new kitchen. He said that he did not feel qualified to suggest what type of new building should be constructed, but he has a serious problem with denying demolition of the existing kitchen.

Mr. Berkley stated that he too, considered this case as two separate issues, and he would not be opposed to allowing the demolition. He added that he would not agree that the proposed design of the new kitchen is in keeping with the existing structure, and he would like to send that part of the request back to the BOAR for further review.

Mr. Wilson stated that he agreed with Mr. Berkley. He said that the beauty of history is that, in many instances, it is difficult to determine what might be significant in the future. Mr. Wilson stated that he does believe that the kitchen is a significant piece of the history of the home.

Ms. Mundy stated that she got to know the owner of the Berkley Plantation in Virginia, who lived in the home during its extensive renovation. She added that there have been many wonderful projects along the James River in Virginia, but they were very expensive and lengthy. Ms. Mundy agreed that the Planning Commission should allow the demolition of the kitchen; but she, too would prefer that the new kitchen design be more in keeping with the historic character of the property. She asked if the appellant would be required to use the same foundation as part of the construction. Ms. Kerr answered that, if the Commission approves demolition, the historic district process would not demand that the same foundation be used.

Mr. Penn stated that the design of the new kitchen had not been discussed at the BOAR as it should be, but regardless, he was prepared to make a motion.

Action: A motion was made by Mr. Penn, seconded by Mr. Berkley, and carried 7-0 (Blanton, Brewer, Drake, and Owens absent) that, in light of the testimony and the orders of Code Enforcement, a Certificate of Appropriateness for demolition should be issued, based on the guidelines that: 1) demolition is the last resort; 2) the demolition should not be detrimental to the character, scale, and rhythm in design and importance of the group of buildings, streetscape, or district; and that the design of the kitchen should be sent back to the BOAR for the appropriate Design Guidelines II.A and IV.C, which indicate that additions should be of compatible design.

**VIII. STAFF ITEMS** – No such items were presented.

**IX. AUDIENCE ITEMS** – No such items were presented.

**X. MEETING DATES FOR May, 2014**

Subdivision Committee, Thursday, 8:30 a.m., Planning Division Office (101 East Vine Street).....	May 1, 2014
Zoning Committee, Thursday, 1:30 p.m., Planning Division Office (101 East Vine Street).....	May 1, 2014
<b>Subdivision Items Public Meeting</b> , Thursday, 1:30 p.m., 2 <sup>nd</sup> Floor Council Chambers.....	<b>May 8, 2014</b>
Planning Commission Work Session, Thursday, 1:30 p.m., 2 <sup>nd</sup> Floor Council Chambers.....	May 15, 2014
<b>Zoning Items Public Hearing</b> , Thursday, 1:30 p.m., 2 <sup>nd</sup> Floor Council Chambers.....	<b>May 22, 2014</b>
Technical Committee, Wednesday, 8:30 a.m., Planning Division Office (101 East Vine Street).....	May 28, 2014
Planning Commission Work Session, Thursday, 1:30 p.m., 2 <sup>nd</sup> Floor Council Chambers.....	May 29, 2014

**X. ADJOURNMENT** – There being no further business, Mr. Cravens declared the meeting adjourned at 5:36 p.m.

TLW/TM/CT/BJR/BS/src

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\* - Denotes date by which Commission must either approve or disapprove request.